



OFFICE OF THE POLICE COMMISSIONER

ONE POLICE PLAZA • ROOM 1400

May 13, 2009

Memorandum for: Deputy Commissioner, Trials

Re: **Detective Roland Gutierrez**
Tax Registry No. 900371
Bronx Court Section
Disciplinary Case No. 83254/07

CHAN

The above named member of the service appeared before Assistant Deputy Commissioner Robert W. Vinal on November 12, 2008 and was charged with the following:

DISCIPLINARY CASE NO. 83254/07

1. Said Detective Roland Gutierrez assigned to the 52nd Precinct Detective Squad, on or about April 7, 2007 engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Detective used a Department vehicle to drive from Bronx County to a location within the confines of Yonkers, New York to pick up an individual and then transported said individual in the Department vehicle from Yonkers, New York back to Bronx County.

P.G. 203-10, Page 1, Paragraph 4

PROHIBITED CONDUCT

2. Said Detective Roland Gutierrez assigned to the 52nd Precinct Detective Squad, on or about April 7, 2007 did wrongfully and without just cause operate a Department vehicle without permission or authority to do so.

P.G. 203-05, Page 1, Paragraph 6

**PERFORMANCE ON DUTY
GENERAL REGULATIONS**

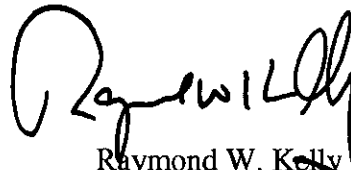
3. Said Detective Roland Gutierrez assigned to the 52nd Precinct Detective Squad, on or about April 7, 2007 did wrongfully allow an unauthorized person to be transported in Department vehicle plate #AUD 7822, RMP #1019, to wit: a black Chevrolet Impala, without permission or authority to do so.

P.G. 202-22, Page 1, Paragraph 3

**RADIO MOTOR PATROL OPERATOR
DUTIES AND RESPONSIBILITIES**

In a Memorandum dated March 10, 2009, Assistant Deputy Commissioner Vinal accepted the Respondent's PLEADING GUILTY to Specification Nos. 1, 2 and 3. Having read the Memorandum and analyzed the facts of this matter, I approve the findings, but disapprove the penalty.

The Respondent's mitigation of his unauthorized use of an RMP for his own personal benefit while off-duty is not persuasive, and such misconduct will not be tolerated. Therefore, regarding this matter, Respondent Gutierrez is to forfeit 25 Vacation days.



Raymond W. Kelly
Police Commissioner



OFFICE OF THE POLICE COMMISSIONER

ONE POLICE PLAZA • ROOM 1400

May 13, 2009

Memorandum for: Chief of Personnel

Subject: **ADMINISTRATIVE TRANSFER, AND TRANSFER
RESTRICTION OF A UNIFORMED MEMBER OF THE
SERVICE**

1. Detective Roland Gutierrez, Tax # 900371, was recently the subject of Disciplinary Case No. 83254/07.

2. Separate and apart from the disciplinary process, the Police Commissioner also mandates that Det. Gutierrez be transferred to a Precinct Detective Squad located *outside* the confines of Detective Borough Bronx. Further, **Det. Gutierrez will not be the subject of any future transfer without the explicit approval of the Police Commissioner.**

3. Forwarded for necessary attention.

BY DIRECTION OF THE POLICE COMMISSIONER

A handwritten signature in black ink, appearing to read "Michael E. Shea".

Michael E. Shea
Deputy Chief
Commanding Officer
Police Commissioner's Office



POLICE DEPARTMENT

March 10, 2009

MEMORANDUM FOR: Police Commissioner

RE: Detective Roland Gutierrez
Tax Registry No. 900371
Bronx Court Section
Disciplinary Case No. 83254/07

The above-named member of the Department appeared before me on November 12, 2008, charged with the following:

1. Said Detective Roland Gutierrez assigned to the 52nd Precinct Detective Squad, on or about April 7, 2007 engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Detective used a Department vehicle to drive from Bronx County to a location within the confines of Yonkers, New York to pick up an individual and then transported said individual in the Department vehicle from Yonkers, New York back to Bronx County.

P.G. 203-10, Page 1, Paragraph 4 – PROHIBITED CONDUCT

2. Said Detective Roland Gutierrez assigned to the 52nd Precinct Detective Squad, on or about April 7, 2007 did wrongfully and without just cause operate a Department vehicle without permission or authority to do so.

P.G. 203- 05, Page 1, Paragraph 16 – PERFORMANCE ON DUTY
GENERAL REGULATIONS

3. Said Detective Roland Gutierrez assigned to the 52nd Precinct Detective Squad, on or about April 7, 2007 did wrongfully allow an unauthorized person to be transported in Department vehicle plate # AUD 7822, RMP # 1019, to wit: a black Chevrolet Impala, without permission or authority to do so.

PG # 202 – 22, Page 1, Paragraph 3 – RADIO MOTOR PATROL OPERATOR
DUTIES AND RESPONSIBILITIES

COURTESY • PROFESSIONALISM • RESPECT

The Department was represented by Lauren Fox, Esq., Department Advocate's Office, and the Respondent was represented by Philip Karasyk, Esq.

The Respondent, through his counsel, entered a plea of Guilty to the subject charges. A stenographic transcript of the mitigation record has been prepared and is available for the Police Commissioner's review.

DECISION

The Respondent, having pleaded Guilty, is found Guilty.

EVIDENCE IN MITIGATION

The Respondent, who has made about 500 arrests and who was promoted to detective in July, 1999, testified that as of April, 2007, he had been assigned to the 52 Precinct Detective Squad for about one year. On April 7, 2007, the Respondent drove his personal vehicle to the 52 Precinct, parked it there and proceeded to perform a 7:00 a.m. to 3:00 p.m. tour of duty.

At 5:00 p.m., the Respondent exited the station house. He was taking his girlfriend to a game at Yankee Stadium that night. The lease on the Respondent's personal vehicle was about to expire and he was concerned that if he drove his car to Yankee Stadium and parked it there, the exterior might get scratched. He decided to leave his car at the 52 Precinct and drive a Department vehicle to the game. He did not request permission or authority to do this. He took Radio Motor Patrol car (RMP) 1019, an unmarked vehicle, drove it to McClean Avenue, which he described as "just inside" the City of Yonkers, and picked up his girlfriend. He then drove to Yankee Stadium. After the game, he drove his girlfriend in RMP 1019 to a bar and grill in the Bronx.

The Respondent parked RMP 1019 across the street from the bar and grill about eight car lengths down the block. He and his girlfriend then entered the bar and grill. Inside, he saw an Auxiliary Police Officer (APO) who was crying because she “was worried that she would get into trouble” because she had just lost her shield. At about 11:30 p.m., the Respondent noticed that a uniformed captain was standing outside the bar and grill and that he was staring at RMP 1019.

When the captain started walking toward the entrance to the bar and grill, the Respondent went outside, approached the captain, identified himself as an off-duty detective and told him that he had driven RMP 1019 to the location. When the captain asked him where he worked, he responded that he was assigned to the 52 Precinct Detective Squad. The captain asked him, “Who is the C.O. (commanding officer) there?” He responded, “Lieutenant Marrone.” When the captain asked him if he was alone in the car, he responded that he was with his girlfriend. The captain then asked him, “What would your C.O. say if I called him and told him you had this car?” He responded, “He probably would be very happy because he is not a fan of mine. He doesn’t like me.” The Respondent explained that he meant that Lieutenant Marrone would be happy to hear that he would be able to serve the Respondent with disciplinary charges for using a Department vehicle without permission. The Respondent explained that the reason his C.O. did not like him was because he has filed a lawsuit against his C.O.

The Respondent testified that he “was tired” after he had performed his tour of duty and that his weariness contributed to his “poor decision” to take a Department vehicle for personal use. He acknowledged that he showed “poor judgment” in taking the car.

The Respondent testified that two days later, on April 9, 2007, he was placed on modified assignment and transferred from the 52 Precinct Detective Squad to Bronx Central Booking where he has been assigned for the past 20 months. On his most recent performance evaluation at Bronx Central Booking he received an overall rating of 4.0.

PENALTY

In order to determine an appropriate penalty, the Respondent's service record was examined. See Matter of Pell v. Board of Education, 34 N.Y.2d 222 (1974).

The Respondent was appointed to the Department on January 13, 1992. Information from his personnel folder that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

The Respondent has admitted that he took a Department vehicle without permission or authority to do so, kept it for over six hours, drove it out of New York City, transported his girlfriend, an unauthorized person, from Yonkers to Yankee Stadium in the vehicle and then drove it to a bar and grill in the Bronx.

In formulating a penalty recommendation, I have given consideration to the Respondent's Department Recognition Summary, his performance evaluations and the fact that the Respondent has no prior formal disciplinary record over 17 years of service.

Consideration has also been taken of the penalties that have been imposed in disciplinary cases involving similar misconduct where the member, as here, pleaded guilty and had no prior formal disciplinary record.

In Disciplinary Case No. 82953/07 (approved on September 25, 2007), a 22-year member with no prior disciplinary record was required to forfeit 13 vacation days after he

admitted that he used his Department vehicle to drive his wife to work and his children to school. The member in that case also admitted that he transported his young children without utilizing child safety seats and that he had dispensed Department fuel into the vehicle while he was off duty.

In Disciplinary Case No. 82484/07 (approved on December 4, 2007), a 16-year member with no prior disciplinary record forfeited 15 vacation days after he pleaded guilty to having used a Department rental car while off duty without authorization. The member in that case also admitted that he neglected to make entries regarding his use of the vehicle in the Command Log and Vehicle Utilization Record.

In Disciplinary Case No. 82462/06 (approved on May 12, 2008), a 14-year member who had one prior disciplinary adjudication forfeited seven vacation days after he admitted that he had transported his stepdaughter in a Department vehicle. After he had signed in at his command, the member used a Department vehicle to drive his stepdaughter to a relative's house which was located in another borough. He also pleaded guilty to being absent from his assignment for one hour and 15 minutes.

Finally, in Disciplinary Case No. 83225/07 (approved on May 19, 2008), a lieutenant, who was a 26-year member with no prior formal disciplinary record, forfeited 15 vacation days after he pleaded guilty to using his Department vehicle to transport his son, an unauthorized person, to school on three separate days.

Although the misconduct the Respondent engaged in here took place on a single occasion, the Respondent admitted that the only reason he took the Department car was because he wanted to avoid getting any scratches on his personal vehicle. Thus, the

Respondent's explanation for his misconduct provides no basis for mitigating the severity of his penalty.

Consistent with the penalties imposed in the above-cited cases, it is recommended that the Respondent be required to forfeit 20 vacation days.

Respectfully submitted,



Robert W. Vinal

Assistant Deputy Commissioner - Trials

